

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

In the Matter of the Public Advocates  
Office's Investigation of Communications  
Pertaining to the Wildfire Mitigation Plan of  
Pacific Gas and Electric Company.

(Not In A Proceeding)  
Pub. Utils. Code § 309.5

**RESPONSE OF THE PUBLIC ADVOCATES OFFICE  
TO PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 E)  
MOTION TO SUPPLEMENT THE RECORD IN THE DISCOVERY DISPUTE  
BETWEEN THE PUBLIC ADVOCATES OFFICE  
AND PACIFIC GAS AND ELECTRIC COMPANY, NOVEMBER 2021;**

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## **I. INTRODUCTION**

Pursuant to Public Utilities Code Section 309.5(e), the Chief Administrative Law Judge's December 20, 2021 email,<sup>1</sup> and the assigned Administrative Law Judge's (ALJ's) January 26, 2022 email,<sup>2</sup> the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) submits this response to the February 3, 2022 Pacific Gas and Electric Company's [PG&E] (U 39 E) Motion to Supplement the Record in the Discovery Dispute Between Public Advocates Office and Pacific Gas and Electric Company, November 2021 (PG&E or PG&E's Motion).

## **II. DISCUSSION**

This Public Utilities Code section 309.5(e) (section 309.5(e)) matter involves an underlying discovery dispute between Cal Advocates and PG&E. This matter was initiated by the Motion of the Public Advocates Office for an Order Compelling Data Request Responses and Imposing Sanctions on Pacific Gas and Electric Company, filed November 30, 2021 (Motion to Compel). After the parties briefed the Motion to Compel, PG&E and Cal Advocates engaged in further discussions in an effort to resolve the discovery dispute between themselves but ultimately could not reach a resolution.

In the PG&E Motion, PG&E states its rationale for its request to supplement the record: "(1) provide a brief narrative history of the meet and confer process that occurred after the [motion to compel] was filed; and (2) submit into the record PG&E's latest proposal to resolve this [section 309.5(e)] matter, which was a result of these discussions."<sup>3</sup> (Proposal). PG&E indicates: "This way, ALJ DeAngelis and the Commission will have a complete record upon which to make a decision in this matter."<sup>4</sup>

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<sup>1</sup> On December 20, 2021, the Chief Administrative Law Judge referred this Section 309.5(e) matter to Administrative Law Judge Regina DeAngelis with instructions.

<sup>2</sup> On January 26, 2022, the ALJ responded in an email to PG&E's email request for permission to submit into the record its proposal to resolve the discovery dispute between the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) and PG&E, with an instruction for PG&E to submit the request in a motion. In the email, the ALJ stated Cal Advocates would be given an opportunity to respond to such a motion by PG&E. Hereinafter, this email will be referred to as the ALJ's January 26, 2022 email.

<sup>3</sup> PG&E Motion, p. 3.

<sup>4</sup> PG&E Motion, p. 4.

As an initial matter, Cal Advocates wants to correct a mischaracterization by PG&E regarding the discussions between the parties. Specifically, with regard to those discussions PG&E states: “During that process, both parties made concessions on the positions outlined in their respective briefing on the Motion.”<sup>5</sup> Cal Advocates did not make any concessions on the legal position outlined in its briefs for its Motion to Compel. Specifically, at no point did Cal Advocates agree or suggest that it is not legally entitled to the information sought by way of its Motion to Compel.

Perhaps more importantly, PG&E’s rationale for supplementing the record has no merit. The Commission’s legal analysis of the discovery dispute at issue is unrelated to the Proposal. Because the Motion to Compel raises questions of law the Commission’s decision on Cal Advocates’ Motion to Compel should be based on the legal merits of the parties’ positions, as set forth in the motion itself, not on what production the parties considered. Concessions that PG&E and Cal Advocates may have discussed after the Motion to Compel was fully briefed, do not alter PG&E’s legal obligations under Public Utilities Code sections 309.5(e) and 314 to produce the discovery requested and should have no bearing on decision on that motion. The Motion to Compel will determine whether PG&E complied with its legal obligations to respond to Cal Advocates’ discovery requests.

Moreover, PG&E had ample opportunity to make the concessions reflected in its Proposal during the several Rule 11.3 meet and confers that occurred prior to the filing of the Motion to Compel. PG&E fails to provide good cause for why it did not present the concessions on which the Proposal is largely based, in a more timely fashion.

Finally, PG&E’s motion runs contrary to Commission policy. First, granting PG&E’s request or otherwise taking their motion into account would encourage parties to withhold their best offers from the required meet and confer process. Again, Cal Advocates notes that PG&E has made no attempt to explain why it did not present the concessions, on which the Proposal is largely based, before briefing for the motion to compel had concluded. Second, granting PG&E’s Motion would only serve to dissuade parties from continuing any attempts to resolve disputes once a Motion to Compel is filed. Commission Rule 12.6 is instructive, albeit not controlling, in this regard:

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<sup>5</sup> PG&E Motion, p. 2.

Participating parties and their representatives shall hold such discussion, admission, concessions, and offers to settle confidential and shall not disclose them outside the negotiations without the consent of the parties participating in the negotiations.

By Rule 12.6, the Commission acknowledges that discussions aimed at resolving disputes should remain with the parties. Finally, as noted above, PG&E's proposal has no bearing on the legal issues at hand. PG&E's Motion serves only to as vehicle to introduce superfluous and inappropriate innuendo into the record in an attempt to bias decision-makers. Regardless of what considerations may or may not have been discussed, the fact is the parties did not agree to anything. The Proposal, which is merely evidence of after the fact conversations that are not relevant to the legal rights at issue in Cal Advocates' pending Motion to Compel, should be rejected.

### **III. CONCLUSION**

For the above reasons, Cal Advocates respectfully requests that the Commission deny PG&E's motion to supplement the record with the Proposal.

Respectfully submitted,

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